IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 13TH APRIL 2007 / 23RD CHAITHRA 1929

RCRev..No. 313 of 2006(F)

(RCA NO.102/2004 OF IST ADDITIONAL DISTRICT JUDGE AND RENT CONTROL APPELLATE AUTHORITY, ERNAKULAM)
(RCP NO.154/2003 OF ADDL.MUNIFF RENT CONTROL COURT, ERNAKULAM)

REVISION PETITIONER

ALBERT MENDEZ, S/O.DOMINIC MENDEZ,
AGED 50 YEARS, KALLACHAMMURI HOUSE,
DOOR NO.32/1115, CHANTHANGAD CROSS ROAD,
PALARIVATOOM, KOCHI-25.

BY ADV. SRI.K.A.MANZOOR ALI

RESPONDENTS: APPELLANTS/PETITIONER
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1. REMA CHANDRAN, D/O.AMMINI AMMA,
PANAKKATTAMPILLY HOUSE, ANCHUMURI,
THAMMANAM, KOCHI-32.

2. AMMINIAMMA, D/O.AMMANI AMMA,
PANAKKATTAMPOLLY HOUSE, ACHUMURI,
THAMMANAM, KOCHI-32. (DELETED)*

(*) THE NAME OF THE 2ND RESPONDENT IS DELETED FROM THE PARTY ARRAY AS PER ORDER DATED 27/9/2006).

BY ADV. SRI.R.LAKSHMI NARAYAN FOR R1
SMT.R.RANJINI FOR R1

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 13/04/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

RCR 313/2006

ORDER IN IA NO.2452 OF 2006 IN RCR 313 OF 2006

DISMISSED

13/4/2007 **SD/- P.R.RAMAN, JUDGE**

SD/-ANTONY DOMINIC, JUDGE

//TRUE COPY//

P.R.RAMAN & ANTONY DOMINIC, JJ.
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R.C.R NO.313 OF 2006
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Dated this the 13th day of April, 2007

O R D E R

Antony Dominic, J.

The tenant in RCP No.154/2003 is the revision petitioner. The respondents herein filed the Rent Control Petition on the allegation that pursuant to a lease agreement dated 1/9/99 executed by the respondent, the second petitioner who was the then owner of the building, leased out the building for a period of 11 months and the tenant continued to occupy the same.. Subsequently, by settlement deed No.1318/2002 of Maradu Sub Registry, the building was transferred to the first petitioner which was also intimated to the tenant. It was alleged that the first petitioner's husband who was working in Acme Manufacturing Company Limited, Mumbai retired from service on 30/4/01 and was residing at their house at Panakkattampilly Road. After the return of the first petitioner and her family from Mumbai, her husband had an idea to start a power laundry and dry cleaning business in the petition schedule premises and on the ground under Sec.11(3) of the Kerala Buildings (Lease and Rent Control) Act, petitioners sought eviction of the revision petitioner tenant. It was also

alleged that though the tenant was instructed to pay rent to the second petitioner's mother, who had authorisation to issue receipt acknowledging payment, the tenant had defaulted payment of rent, warranting eviction under Section 11(2)(b) of the Act.

2. The Revision petitioner contested the proceedings denying the need urged by the landlord. According to the revision petitioner, the first petitioner and her husband were still working in Mumbai and earning high income. It was also stated that they had no intention to start any business. According to him, he had not defaulted in the payment of rent and the second petitioner was declining to accept whenever payment was tendered. He also stated that the building was not suitable for setting up the business of power laundry and dry cleaning. He also alleged that the landlords had demanded a huge rent of Rs.1500 per month and a security deposit of Rs.1 lakh for which he was not amenable and that the bonafide need now urged was only to get him evicted from the building.

3. The Rent Control Court by its order dated 31.5.2004, granted eviction under Section 11(2)(b) of the Act and the prayer for eviction under Section 11(3) was disallowed. The landlords thereupon filed RCA 102/04 before the Rent control Appellate Authority and the

Appellate Authority disposed of the appeal by its judgment dated 31.3.2006 setting aside the rejection of the prayer for eviction under Section 11(3) of the Act and allowing the same. The tenant was directed to vacate the premises within two months. It is aggrieved by the order of eviction under Section 11(3) granted by the Appellate Authority that the tenant has filed this revision petition.

4. At the time of hearing, the only ground urged by the counsel for the revision petitioner/tenant was that there was no material before the Rent control Court or the Appellate Authority that the husband of the first petitioner for whose occupation eviction was sought, was a member of the family depending upon the first petitioner, the landlord. According to counsel eviction under Section 11(3) can be sought by a landlord only for his own occupation or for the occupation by any member of his family dependent on him. It was contended that unless dependency is pleaded and proved, eviction cannot be claimed and therefore the order of the Rent Control Appellate Authority, granting eviction under Section 11(3) was unsustainable.

5. On the other hand, the counsel for the landlords contend that the parties joined issue before the Rent Control Court and the

Appellate Authority on the basis that the husband for whose occupation eviction was sought is a dependant of the first petitioner landlord. Although the counsel has fairly conceded that there is no express pleading of dependency in the petition, according to him, in view of the materials placed and the evidence adduced, no prejudice has been caused to the revision petitioner/tenant. He also contended that a metriculous evaluation of the pleadings, is not necessary in a summary proceedings under the Kerala Buildings (Lease and Rent Control) Act, 1965.

6. We have considered the submissions made by both sides.

7. We have been referred to the pleadings in the Rent Control Petition and we note that there is no pleading in the Rent control petition that the husband of the first petitioner, the landlord, is dependant upon the first petitioner. This aspect has been dealt with by the Rent Control Court. According to the Rent Control Court, the absence of clear pleading that the first petitioner's husband is a dependant is also a sufficient reason for holding that the petitioners could not satisfy the requirements of Section 11(3). However, the Rent Control Appellate Authority, has held that it is not necessary to say that the husband of the petitioner is a dependant of the first

petitioner. According to the Rent Control Appellate Authority, the petitioner's husband being the family member, there is no need to put forward a pleading that he is a dependant of her to get vacant possession of the petition schedule room. It is on that basis that the Rent Control Appellate Authority has overruled the finding of the Rent Control Court and ordered eviction.

8. In our view, the approach of the Rent Control Court is the correct one. A reading of Section 11(3) of the Act discloses that, a landlord can seek eviction either for his own occupation or for the occupation of any member of his family "dependant" on him. Therefore the section contemplates eviction only if a member of the family for whose benefit eviction is sought provided such member is a dependant of the landlord. A family can have a member, who is not a dependant of the landlord and in which case Section 11(3) cannot be pressed into service. The requirement of the section can be satisfied only if it is pleaded and proved that the concerned member of the family is dependant on the landlord. As rightly pointed out by the Rent control Court and disclosed in the Rent Control Petition itself, there is no pleading in this regard and therefore, in our view, the petition does not satisfy the requirements of Section 11(3) of the Act. We also hold the

view that the approach of the Rent control Appellate Authority is patently erroneous. The mere reason that the husband is a member of the family, does not presuppose that the husband is a dependant of the wife. The fact of membership in the family does not satisfy the requirement of Section 11(3) and hence we cannot agree with the conclusion of the Rent control Appellate Authority in this regard.

9. Learned counsel for the revision petitioner/tenant referred us to the Division Bench decision of this Court in **Prathapan v. Rama Warrier (2004(2) KLT 559)**, where it has been held that dependency is a matter to be proved by proper pleadings and that in the absence of which, the finding under Section 11(3) cannot be sustained. We fully concur with the law laid down by the Division Bench and hold that the pleadings in the Rent control petition does not satisfy the requirement of this Section.

10. As we have already noted the counsel for the landlord submitted that a metriculous evaluation of the pleadings, is not necessary in a summary proceedings under the Kerala Building (Lease and Rent Control) Act, 1965. He also referred us to the judgment of this Court in **Shaji Varghese v. Cherian (1993(1) KLT 133).** Though we agree with this, we should add that what is required to be

proved as per the express words of the section cannot be compromised and to that extent proper pleadings are required to be made and evidence would also be led and in the absence thereof, a petition is bound to fail. In this case, the essential requirement of Section 11(3), is dependency of the member of the family. That essential fact has not been pleaded or proved and therefore the petition is bound to fail.

11. In the result, we set aside the judgment of the Rent Control Appellate Authority in RCA 102/2004 and restore the order of the Rent control Court in RCP 154/2003.

The Revision petition will stand allowed.

P.R.RAMAN, JUDGE.

ANTONY DOMINIC, JUDGE.

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